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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

NO: 2:17-CR-128-RMP-9

8 Plaintiff,

9 v.

ORDER OF DISMISSAL

10 LUCAS T. CASSIDY, II (9),

11 Defendant.

12
13 **BEFORE THE COURT** is a Pretrial Services Report, **ECF No. 229**,
14 reporting that Defendant Lucas T. Cassidy died on November 8, 2017. Mr. Cassidy
15 had entered a guilty plea, ECF No. 197, to one count of the Indictment, ECF No. 1,
16 in this matter on October 27, 2017. At the time that the Court accepted Mr.
17 Cassidy's guilty plea, the Court scheduled sentencing for January 11, 2018. ECF
18 No. 198.

19 The general rule is that "death pending appeal of a criminal conviction abates
20 not only the appeal but all proceedings in the prosecution from its inception."
21 *United States v. Oberlin*, 718 F.2d 894, 895 (9th Cir. 1983) (citing *Durham v. United*

1 *States*, 401 U.S. 481, 483 (1971) (per curiam); *see also United States v. Christopher*,
2 273 F.3d 294, 297 (3d Cir. 2001) (“[W]here a convicted criminal defendant dies
3 after filing an appropriate appeal, the conviction will be abated and the case
4 remanded to the district court with instructions to dismiss the indictment.”). The
5 Ninth Circuit also has abated the prosecution of a defendant who died following
6 conviction but prior to entry of judgment. *Oberlin*, 718 F.2d at 895–96 (“We see no
7 reason to treat a criminal defendant who dies before judgment is entered any
8 differently from one who dies after a notice of appeal has been filed. In either case,
9 he is denied the resolution of the merits of the case on appeal.”). Therefore, in light
10 of Mr. Cassidy’s death, the Government’s cause of action against Mr. Cassidy has
11 abated *ab initio*, negating his conviction.

12 Accordingly, **IT IS HEREBY ORDERED** that:

- 13 1. The Indictment at ECF No. 1 is **DISMISSED as to Mr. Cassidy**.
- 14 2. All previously set court dates, including the sentencing date, are
15 **STRICKEN**.

16 The District Court Clerk is hereby directed to enter this order, provide copies
17 to counsel and the United States Probation Office, terminate Lucas Cassidy as a
18 Defendant in this case, and **close the file**.

19 **DATED** November 15, 2017.

20
21 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge